

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte RONALD J. AUSTIN

Appeal No. 2003-0928
Application No. 09/692,431

ON BRIEF

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (Paper No. 5, mailed May 22, 2002) of claims 1 to 5. Claims 6 to 9, the only other claims pending in this application, have been indicated by the examiner as containing allowable subject matter.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to accessories for facilitating the alignment of the hitches of a towing vehicle and a towed vehicle (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Murray	5,035,441	July 30, 1991
Law et al. (Law)	5,269,554	Dec. 14, 1993

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Law.

Claims 2 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Law.

Claims 3 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Law in view of Murray.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 12, mailed December 11, 2002) for the examiner's complete reasoning in

support of the rejections, and to the brief (Paper No. 11, filed November 7, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection based on Law

We sustain the rejection of claim 1 under 35 U.S.C. § 102(b).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something

disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claim 1 reads as follows:

A trailer hitch alignment device comprising:
a hitch alignment guide comprised of a first vertically disposed, elongated alignment mast affixed to a hitch base; and
a ball target mast comprised of a second vertically disposed, elongated alignment mast affixed to a ball base.

Law's invention is an alignment guide which includes two guide assemblies, one of which is mounted to a trailer hitch ball and the other mounted to a trailer tongue, wherein the guides assemblies each include telescoping vertical leg members for alignment and communication relative to one another for the positioning of a trailer hitch tongue relative to an associated trailer ball. As shown in Figure 3, the first guide assembly 11 includes a split cylindrical clamp ring 13 arranged for securement about a trailer ball. A first support lug 16 is mounted exteriorly of the clamp ring 13 to an outer surface of the side wall thereof having a first support lug boss 17 oriented parallel relative to an axis of the cylindrical clamp ring 13. A first support base lower end portion 18 has a cylindrical socket to receive the first support lug boss 17 therewithin, with a first support base fastener 19 directed through the first support base lower end portion 18 to secure the components together. A first support base first leg 22 is

telescopingly received within the first support base upper end portion 20. A first support base second leg 23 is telescopingly received within the first support base first leg 22 and similarly, a first support base third leg 24 is telescopingly received within the first support base second leg to coaxially align the legs 22-24 relative to the first support lug boss 17.

Law's second guide assembly 12 includes a U-shaped clamp 25 having a plurality of respective first and second bores 26 and 27 arranged on opposed sides of legs of the U-shaped clamp, with the first and second bores receiving respective first and second fastener members 28 and 29 to clamp opposed sides of a trailer tongue. A second support lug 30 is mounted medially and exteriorly of the U-shaped clamp 25, with the second support lug 30 having a second support boss 31 fixedly mounted thereto oriented generally orthogonally relative to the first and second bores 26 and 27. A second support base 32 is provided having a tubular socket to receive the second support lug boss 31 therewithin, with the second support base lower end portion 32 having a second support boss lower end portion fastener 33 directed into the second support boss 32 to secure the second support boss lower end portion 32 to the second support lug boss 31. A second support base first leg, second leg, and third leg 36, 37, and 38 that are respectively telescopingly received relative to one another are in turn

telescopingly received within the second support base upper end portion 34, in a manner as described relative to the legs 22, 23, and 24 of the first guide assembly 11.

Upon mounting of the first and second guide assemblies to the respective trailer ball "B" and the trailer tongue "T", as illustrated in Figure 7, an individual peering rearwardly from an associated tow vehicle may ascertain the proper positioning of the telescoping leg portions of each guide assembly to effect abutment of the guide assemblies relative to one another and thereby the alignment of the trailer tongue to the trailer ball.

The appellant argues (brief, pp. 7-8) that Law fails to teach (1) a series of spacing indicia along the upper shaft of the upper telescoping mast, (2) a series of spacing indicia along the upper shaft of the second upper telescoping mast, (3) a hitch base comprised of a sturdy magnetic disc with a first mast receiving cavity formed therein being tapped and being female-threaded for threadingly mating with the lower base mast allowing for a screw-type connection, (4) a ball base comprised of an annular magnetic ring and a second mast receiving cavity formed within the protrusion thereof at an offset from a center of the magnetic ring, and (5) a lower ball receiving bevel formed along the lower surface of the ring, thereby widening the outer diameter of the lower portion of the central orifice.

The appellant's argument fails to persuade us that the subject matter of claim 1 is novel since none of the limitations argued for patentability appears in claim 1. Argued limitation (1) appears in claim 3. Argued limitation (2) appears in claim 5. Argued limitation (3) appears in claim 6. Argued limitation (4) appears in claim 8. Argued limitation (5) appears in claim 9. Accordingly, the appellant has not specifically set forth any argument as to why the subject matter of claim 1 is not anticipated by Law. Moreover, it is our view that claim 1 is anticipated by Law since claim 1 "reads on" Law as follows: A trailer hitch alignment device (Law's trailer hitch alignment guide apparatus 10) comprising:

a hitch alignment guide (Law's second guide assembly 12) comprised of a first vertically disposed, elongated alignment mast (Law's second support base lower end portion 32, second support boss upper end portion 34 and telescoping first legs 36, 37, and 38) affixed to a hitch base (Law's second support lug 30 and U-shaped clamp 25); and

a ball target mast (Law's first guide assembly 11) comprised of a second vertically disposed, elongated alignment mast (Law's first support base lower end portion 18, first support base upper end portion 20 and telescoping legs 22, 23 and 24) affixed to a ball base (Law's first support lug 16 and split cylindrical clamp ring 13).

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is affirmed.

The obviousness rejection based on Law

We sustain the rejection of claims 2 and 4 under 35 U.S.C. § 103.

In the final rejection (p. 2) and the answer (p. 4), the examiner set forth his rationale as to why claims 2 and 4 were unpatentable over Law. Specifically, the examiner ascertained that the base mast of Law (i.e., the support base upper end portions 20 and 34) was not tapered as claimed but that such a modification would have been obvious at the time the invention was made to a person of ordinary skill in the art.

The appellant has not specifically contested this rejection in the brief. Instead, the appellant relies on the differences with respect to Law pointed out above with respect to claim 1 (brief, p. 8). None of the differences with respect to Law pointed out above with respect to claim 1 are recited in claims 2 and 4. Accordingly, the appellant has not specifically set forth any argument as to why the subject matter of claims 2 and 4 is patentable over the teachings of Law. Accordingly, we summarily sustain the rejection of claims 2 and 4 under 35 U.S.C. § 103.

The obviousness rejection based on Law and Murray

We will not sustain the rejection of claims 3 and 5 under 35 U.S.C. § 103.

Dependent claims 3 and 5¹ read as follows:

3. The trailer hitch alignment device of Claim 2, further comprising: a series of spacing indicia along the upper shaft of the upper telescoping mast, said spacing indicia being equally spaced apart along the outer surface of the shaft; and a terminating indica at the top-most end of the said telescoping mast.

5. The trailer hitch alignment device of Claim 4, further comprising: a series of spacing indicia along the upper shaft of the second upper telescoping mast, said spacing indicia being equally spaced apart along the outer surface of the shaft; and a terminating indica at the top-most end of the said second telescoping mast.

In the answer (p. 4), the examiner set forth his rationale as to why claims 3 and 5 were unpatentable over Law. Specifically, the examiner (1) ascertained that Law did not disclose the claimed spacing indicia; (2) found that "Murray shows indicia 23/24;" and (3) concluded that it would have been obvious to one with ordinary skill in the art at the time the invention was made to include spacing indicia, as shown in Murray, along the shaft of Law's telescoping masts.

¹ There is no proper antecedent basis for "the upper shaft" as recited in claims 3 and 5.

The appellant's argue (brief, pp. 8-9) that Murray does not teach or suggest the claimed spacing indicia. We agree.

Murray's invention relates to a visual aid to assist a driver in maneuvering a towing vehicle toward a trailer or other vehicle to be towed for precisely aligning the hitch components of the two vehicles. The device mounts only to the towed vehicle and includes a mast 23 consisting of four mast sections 23a, 23b, 23c, and 23d, three ferrules 24a, 24b, 24c and a protective end cap 25. The ferrules 24a, 24b and 24c are permanently attached to the mast sections 23a, 23b and 23c respectively. The mast sections 23a, 23b, 23c, 23d can be separated from one another and inserted into adaptor 18 for easy storage as illustrated in Figure 9.

Murray's mast does not include a series of spacing indicia. Thus, it would not have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified the upper shafts of Law's telescoping masts to include equally spaced indicia along the outer surface of each shaft. Accordingly, the decision of the examiner to reject claims 3 and 5 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is affirmed; the decision of the examiner to reject claims 2 and 4 under 35 U.S.C. § 103 is affirmed; and the decision of the examiner to reject claims 3 and 5 under 35 U.S.C. § 103 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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